IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.253 OF 2004

Shankar Gopal Parab .. .. ..Appellant
Versus
Vasant D.Madwal @ Gaonkar .. ..Respondent

Mr.Gangadhar J.Sabnis for appellant
Mr.S.G.Karandikar for respondent

CORAM : P.V.KAKADE, J.

DATE : 14TH SEPTEMBER, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl. District Judge, Sindhudurg dated 12.11.2003 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division Kudal dismissing the plaintiff's suit for declaration and perpetual injunction restraining the defendant from obstructing or interfering plaintiff's rights to worship and perform a rite known as "Chiripan" in land Survey No.88 H.No.12, which is owned by plaintiff and further restraining defendant from obstructing and interfering plaintiff's right to proceed with a Yoke through land S.No.59 H.No.18,which is with defendant as a servant of Devasthan, in order to engage the same in land S.No.58

H.No.28 as a token of commencement to start cultivation in the lands of villagers.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiff's suit was adjudicated by the trial court on the basis of available evidence holding that the plaintiff had failed to prove his legal right of way in Survey No.59/18 for performing religious rite of engaging Yoke. It was also held that plaintiff had also failed to prove that religious rite of Chiripan was to be performed in Land S.No.88 H.No.12 and as such the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties dismissed the appeal concurring with the findings recorded by the trial court. Hence the present appeal.

4. As can be seen from the record that there is no substantial question of law involved in the present appeal. The issues relating to the dispute involved are the factual aspects. Moreover, there is no iota of evidence to show that the plaintiff has any such right

as alleged to perform religious rite in the land, admittedly owned by the defendant, and therefore, there is no doubt whatsoever that both the courts below have recorded the findings on the basis of available evidence dismissing the plaintiff’s suit. In these circumstances there is no case made out for interference by this court and hence the appeal stands dismissed with no order as to costs.